



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D. C. 20503

September 28, 2012

Mr. Anthony Schick
Schick.anthony@gmail.com

Dear Mr. Schick:

This responds to your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated June 4, 2012, which you amended on June 18, 2012 (your request is assigned FOIA tracking number 12-I39).

In your original request of June 4, 2012, you asked for copies of correspondence that “members of congress, representatives of the agriculture industry and other related groups” sent to OMB’s Office of Information and Regulatory Affairs (OIRA):

Correspondence to the Office of Information and Regulatory Affairs from members of congress, representatives of the agriculture industry and other related groups in regards to the proposed changes to 29 CFR Parts 570 and 579: “Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties” that would add further regulation to the employment of minors in agriculture. I have attached a copy of the proposed regulations referenced above.

On June 18, 2012, you amended your request to include the following additional documents:

all records and communications, including emails, telephone messages, calendar entry, meeting notes and memoranda, involving staff of OMB’s Office of Information and Regulatory Affairs, regarding the Department of Labor’s draft proposed rule “Child Labor Regulations, Orders and Statements of Interpretations” for the period November 12, 2010 to the present. Specifically, I am requesting records of communications between OIRA staff, including Mr. Cass Sunstein and Mr. John Kraemer, and officials with the U.S. Department of Labor’s (DOL) Office of the Solicitor of Labor, the Office of the Assistant Secretary for Policy, the Wage and Hour Division, or other DOL staff. I am also requesting any records of meetings or communications between OIRA officials and representatives of the U.S. Department of Agriculture and the Small Business Administration regarding RIN 1235-AA06. Finally, I am requesting any records of meetings or communications between OIRA officials and representatives of non-governmental organizations, such as the American Farm Bureau Federation, State Farm Bureaus, National Federation of Independent Businesses or other industry trade associations.

Regarding your amended request for those additional documents, you explained that:

My request for this information [is] based on the disclosure provisions for OIRA contained in Executive Order 12866 "Regulatory Planning and Review."

Although this Executive Order dates back to 1993, President Obama embraced it and it remains in place. Section 6(B)(4)(D) reads:

"After the regulatory action has been published in the Federal Register or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section."

In response to your request, OMB conducted a search of OMB's for documents that are responsive to your request, and identified 1,019 potentially responsive pages. As explained below, we are releasing 390 pages in their entirety; releasing 52 pages in part (with redactions); and withholding 637 pages in their entirety.

We have determined that 390 pages are appropriate for release in their entirety, and they are enclosed. These enclosures include the drafts of the rule (1) as submitted to OIRA for review and (2) on which OIRA concluded review.

In addition, we have determined that 637 pages are exempt from mandatory disclosure, in their entirety, pursuant to FOIA Exemption 5, 5 U.S.C. § 552(b)(5), because they are interagency or intra-agency predecisional, deliberative materials. These pages are being withheld because their disclosure would inhibit the frank and candid exchange of views that is necessary for effective government decision-making.


Finally, with respect to the remaining 52 pages, portions of these materials are exempt from mandatory disclosure pursuant to FOIA Exemptions 2, 5 and 6, at 5 U.S.C. § 552(b)(2), (5), and (6). Exemption 2 exempts from mandatory disclosure information that is related to purely internal agency practices. Exemption 5 exempts from mandatory disclosure interagency or intra-agency pre-decisional deliberative materials; the exempt portions of these 52 pages (along with the other 1,027 pages) are being withheld under Exemption 5 because their disclosure would inhibit the frank and candid exchange of views that is necessary for effective government decision-making. Under Exemption 6, certain portions of the materials have been redacted (such as private citizens' cell phone numbers and e-mail addresses), because their disclosure would constitute a clearly unwarranted invasion of the personal privacy.

With respect to this response to your request, there is one additional point to address. As noted above, you explained in your amended request that you are seeking the documents under the public disclosure provisions of Executive Order (E.O. 12866). I should note that the disclosure requirements that apply to OIRA under E.O. 12866 apply with respect to OIRA's communications with the public as well as to OIRA's communications with the Labor

Department (which is the rulemaking agency for the proposed rule). Accordingly, communications about this draft rule that took place between OIRA and the Agriculture Department, and between OIRA and SBA, do not fall within the scope of the executive order's disclosure requirements, because those communications were not between OIRA and the rulemaking agency. In addition, I should also note that it has been the Executive Branch's longstanding practice under E.O. 12866 (and its predecessor, Executive Order 12291) that the executive order's disclosure requirements apply to documents that were exchanged between the rulemaking agency and the OIRA employees who are at the branch chief level and above (thus including OIRA's branch chiefs and OIRA's Deputy Administrator, Associate Administrator, and Administrator). With respect to documents that are exchanged between the rulemaking agency and OIRA staff who are below the OIRA-branch chief level, such documents are not subject to the executive order's disclosure requirements. This is discussed in two reports regarding OIRA that were issued by the Government Accountability Office (GAO) in September 2003 (GAO-03-929) and April 2009 (GAO-09-205). Both of these GAO reports are available on GAO's website.

This is my personal decision, for which you may file an administrative appeal in accordance with OMB's FOIA regulations at 5 C.F.R. § 1303.

Sincerely,


Dionne Hardy
FOIA Officer

Enclosures